IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2081 OF 2004
AND
CRIMINAL WRIT PETITION NO.2082 OF 2004.

Mr. S.B. Kumar ..Petitioner
V/s
M/s Pancharatna Bar &
Restaurant & Ors. .. Respondents.

Mr. Premlal for the petitioner.
Mr. Nitin Pradhan for the respondents.
Mr. P.A.Pol,APP for the State.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 17TH OCTOBER, 2006.

P.C.

. These petitions are styled as one under Article 227 of Constitution of India. In these petitions the petitioner-original complainant contends that offence under section 138 r/w 141 of Negotiable Instruments Act 1888 is committed by the respondents and the respondents are held guilty of the commission of the same but the learned Metropolitan Magistrate has not imposed the sentence on them in accordance with law and adequately. In other words, sentence in accordance with the provisions of law be imposed on conviction, is the prayer of the petitioner-complainant. The learned Advocate appearing in support of this petition has taken

me through the order passed by the Metropolitan Magistrate and the Revisional Court. In his submission, the Courts below have completely misread and mis-interpreted the materials on record to arrive at a erroneous conclusion that the petitioner-complainant has received the amount under the cheques and he has not been faithful enough in disclosing the same.

2. The learned Advocate submits that the Courts below have relied upon their observations in the Judgment and erroneously held that the sentence as imposed would be adequate and proper. He submits that the sentence imposed is a mockery of powers conferred upon the courts in as much as the Courts below have imposed a fine of Rs. 1000/- each only. The sentence as imposed is grossly inadequate and disproportionate to the guilt of the Accused. Both the respondents are convicted but the punishment in accordance with law is not imposed, in the light of the observations in para 8 to 10. However, these paragraphs do not indicate that the petitioner-complainant has admitted in any manner the receipt of the amounts under the cheques.

3. Mr. Pradhan appearing for the respondents, on

the other hand, has supported the orders and has pointed out that the Courts below have recorded a concurrent finding of fact that the complainant has not acted bonafide. He has not disclosed receipt of sum of Rs. 4, 89,172 out of the alleged cheque amount of Rs. 6 lakhs. That apart, he has not faithfully pointed out receipt of the cash amounts as well. In such circumstances, the complainant has received more sums than the amount under the dishonoured cheques. Therefore, he is not entitled to any discretionary and equitable relief.

4. As I have treated this petition as filed under Article 227 of Constitution of India, I cannot reappriciate and reappraise the material on record and arrive at a different conclusion not only regarding the guilt of the accused but the sentence imposed on them. The Judgment and order is of conviction and sentence. Naturally, the petitioner is not aggrieved by this part of the judgment. He has raised objection to the quantum of the sentence imposed. According to him Negotiable Instrument Act does not provide for a lenient view, considering the object and purpose in inserting Chapter XVII in the Enactment by amendment of 1988. He has

contended that imprisonment that is provided can be extended now by two years but earlier it was one year only. The fine amount can extend twice the amount of the cheque and accused can be punished with both i.e. imprisonment and fine. In such circumstances, the discretion should could have been exercised in accordance with law and on sound Judicial Principles.

5. It is not possible to agree with the learned Advocate appearing for the petitioner because, the trial court has in para 15 of its Judgment and order dated 17th April, 2003 assigned cogent and satisfactory reasons for imposing the sentence of fine of Rs. 1,000/- each only. The reasons are that the complainant has received substantial payment from the accused. The Trial Court's finding in this behalf has been upheld by the Revisional Court and in para 17 this is what is observed by the Revisional Court:-

> "Thus on scrutiny of evidence and on going through Judgment of Lower court it is observed that both complainant and accused have not come before Court with clean hands. As claim put forth by complainant is not justifiable as the fact is established by accused from the evidence of complainant and Bank officer that payment of Rs. 4,89,175/- received by complainant from the accused by way of cheques and by way of cash

> amount. Complainant ought to have put forth correct principal amount as well as interest due and payable to him by accused persons while lodging complaint. But he failed to do so. On the other hand, assuming payment of Rs. 4,89,175/- made by accused to complainant even then some amount principal as well as interest is yet to payable by accused to complainant and therefore ingredients of Sec. 138 r/w 141 of Negotiable Instrument Act established by complainant and therefore both complainant as well as accused are equally held dishonest and therefore while awarding sentence to accused Nos. 2 to 5 lower Court rightly used discretion and convicted accused No. 2 to 5 to pay fine of Rs. 1000/- each in default to undergo S.I. for 30 days. Under such circumstances, I think it proper that order passed by the Lower Court in Both the revisions are correct and legal one and rightly using discretion while awarding sentence to accused. No interference is required in the order of Lower Court."

6. In the light of the above factual circumstances, this is not a fit case for exercising the equitable and discretionary jurisdiction under Article 227 of Constitution of India. In the light of the materials produced before the courts below, the finding recorded cannot be said to be vitiated by any error apparent or perverse so as to call for interference in my limited jurisdiction.

7. The decison relied upon by learned Advocate for the Petitioner would not in any manner apply to the

facts and circumstances of the present case. The Judgment of the Hon'ble Supreme Court which has been heavily relied upon on the point of inadequate sentence itself makes it clear that if the fine imposed has been paid to the complainant there perhaps would have been justification for imposing a flee-bite sentence. It is only in the light of the facts that the amount has been paid and the complainant admits receipt thereof as indicated in the Revisional Court's order that the Judgment relied upon and reported in AIR 2002 S.C.681 (Suganthi Suresh Kumar V. Jagdeeshan) would not apply and is clearly distinguishable.

8. Petition is dismissed.

(S.C. DHARMADHIKARI, J.)